

The American people have long distinguished between the first amendment's guarantee of an individual's right to speak his or her mind and the repulsive expression of desecrating the flag. For many years, the people's elected representatives in Congress and 49 State legislatures passed statutes prohibiting physical desecration of the flag, and our political speech thrived. It was just as robust as it is today.

Yet in 1989, the Supreme Court's novel interpretation of the first amendment concluded that the people, their elected legislators, and the courts are no longer capable of making these reasonable distinctions, distinctions that we frequently make in this body such as when we prohibit speeches or demonstrations of any kind, even in the silent display of signs or banners, in the public galleries.

The American people created the Constitution, and they reserved to themselves the right to amend the Constitution when they saw fit. Is it wrong to give the American people the opportunity to review whether the Supreme Court got it right in this case? I think not.

The fact is, a Senator does not take an oath to support and defend the holdings of the Supreme Court. We take an oath to support the Constitution. And, it is entirely appropriate that when we think the Court gets it wrong, we correct it through proper constitutional devices, devices set out in the Constitution itself. . . . Though it has been forgotten over the years, this is hardly a radical idea. It was one supported by the founders of both the Republican and Democratic parties, Thomas Jefferson and Abraham Lincoln.

As some in this body have noted, our courts are now frequently attempting to identify a national consensus to justify contemporary interpretations of our constitutional guarantees. The progress of this amendment to protect the flag demonstrates to me at least just how such a consensus is supposed to develop. Through argument, through give and take, through debate—over time the American people, as reflected in the actions of their representatives, have become more sure than ever that they should have the opportunity to protect their flag through moderate and reasonable legislation.

After September 11, citizens proudly flew the flag, defying the terrorist challenge to our core values of liberty and equality, and confirming its unique status as a symbol of our nation's strength and purpose. In the struggle that has followed, our flag stands as a reminder of the many personal sacrifices made to protect and strengthen our nation.

And so, to protect this symbol, I am today introducing this amendment.

I thank my colleagues, Senators FEINSTEIN, THUNE, and TALENT for their work on this. I urge those who are not cosponsors of this amendment to keep an open mind as we debate this resolution.

It is my hope that the Judiciary committee will move the resolution to the floor.

And, in turn, I ask that our leadership ensure this resolution gets a vote on the floor.

Mr. THUNE. Mr. President, today, it is my distinct honor and privilege to rise and speak on behalf of Senator HATCH, Senator FEINSTEIN, Senator TALENT, myself, and 47 other senators, as we introduce bipartisan legislation we believe to be long overdue. It is not reform legislation. It does not authorize new government programs, create new sources of tax revenue, or provide incentives to stimulate our economy. It is none of those things, but it is a matter of great importance. The events of 9/11 have reminded us all of that. It is, instead, legislation that speaks to the core of our beliefs and hopes as a Nation, and as a people. It is about a national treasure and a symbol of our country that the vast majority of Americans—and the majority of this great body, I might add—believe is worth special status and worthy of protection. It is about the American flag.

Our American flag is more than mere cloth and ink. It is a symbol of the liberty and freedom that we enjoy today thanks to the immeasurable sacrifices of generations of Americans who came before us.

It represents the fiber and strength of our values and it has been sanctified by the blood of those who died defending it.

I rise today to call upon all members of this body to support a constitutional amendment that would give Congress the power to prohibit the physical desecration of the American flag. It would simply authorize, but not require, Congress to pass a law protecting the American flag.

This amendment does not affect anyone's right to express their political beliefs.

It would only allow Congress to prevent our flag from being used as a prop, to be desecrated in some ways simply not appropriate to even mention in these halls.

This resolution and similar legislation have been the subject of debate before this body before. There is, in fact, a quite lengthy legislative history regarding efforts to protect the American flag from desecration. In 1989, the Supreme Court declared essentially that burning the American flag is "free speech." That is a decision the American people should make, particularly when this country finds itself fighting for democracy and expending American lives for that cause, on battlefields overseas.

South Dakota veterans and members of the armed forces from my State know exactly what I'm talking about, as I'm sure they do from every state represented in the Senate. In recent months, units of the 147th field artillery and 153rd engineer battalions of the South Dakota National Guard returned home after spending a difficult

year in Iraq. Likewise, the 452nd ordnance company of the United States Army Reserve is preparing to depart for Iraq in September.

My father, like many other veterans of World War II, understands the importance of taking this step. Veterans from across South Dakota have asked me to step up and defend the flag of this great Nation and today I am answering that call.

Today, members of both political parties will introduce a proposed constitutional amendment that would give back to the American people the power to prevent the desecration of the American flag. We know the gravity of this legislation. There is nothing complex about this amendment, nor are there any hidden consequences. This amendment provides Congress with the power to outlaw desecration of the American flag, a right that is widely recognized by Madison, Jefferson, and Supreme Court Justice Hugo Black, one of the foremost advocates of first amendment freedoms.

Most states officially advocate Congress passing legislation to protect the flag. Frankly, I do not see this as a first amendment issue.

It is an attempt to restore the traditional protections to the symbol cherished so dearly by our Government and the people of the United States. Some acts are not accepted as "free speech" even in societies like ours where we consider free speech a cherished right. For example, an attempt to burn down this Capitol building as a political statement would never be viewed as someone's right of free speech. Our laws would not tolerate the causing of harm to other's property or life as an act of "free speech." This flag happens to be the property of the American people, in my opinion, and this question should be put before the States and their people to decide how and if to protect it. I think the answer will come back as a resounding "yes".

There is little doubt that the debate over state ratification will trigger a tremendous discussion over our values, beliefs and whether we will ultimately bestow a lasting honor on our traditions. Importantly, it will be an indication of how we recognize our servicemen and women who are sacrificing—right now—in Iraq and Afghanistan, to protect those traditions and values for us. Will we honor them, and all the veterans who served and died in wars for this country and our flag over the last 200 years? That's not a question which a court should hold the final answer.

I believe the time has finally come. I believe our country wants this debate. The majority of this Senate, I believe, wants this amendment. We begin it here, and we begin it now. Let the debate begin.

Mr. BURNS. Mr. President, I come to the floor today to voice my support for the flag amendment.

The flag of the United States of America is a symbol of freedom. The flag of the United States of America